

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD SMILEY and
MARILYN SMILEY, h/w
Plaintiffs,

v.

ARTISAN BUILDERS; THE
WHEELCHAIR MAN COMPANY,
INC. and UNITED STATES OF
AMERICA

CIVIL ACTION
NO. 13-7411

Defendants.

ORDER

AND NOW, this 4th day of March, 2015, upon consideration of Defendant United States' Motion to Dismiss (Doc. No. 10), Plaintiffs' Response thereto (Doc. No. 11) and Defendant's Reply (Doc. No. 13), it is hereby ORDERED as follows:

- (1) Defendant's Motion to Dismiss Plaintiff Ronald Smiley's negligence claim is DENIED without prejudice;
- (2) Defendant's Motion to Dismiss Plaintiff Marilyn Smiley's loss of consortium claim is GRANTED and said claim is DISMISSED;
- (3) **On or before May 1, 2015**, the parties shall complete jurisdictional discovery limited to the issue of whether Artisan Builders and The Wheelchair Man Company are "independent contractors" for purposes of potential liability under the Federal Tort Claims Act; and
- (4) **On or before May 15, 2015**, Defendant shall either re-file a Motion to Dismiss or file its Answer to Plaintiff Ronald Smiley's Amended Complaint.

BY THE COURT:

/s/ C. Darnell Jones, II J.